

**REMARKS**

This paper is submitted in response to the Final Office Action mailed September 24, 2003. Upon entry of this Amendment, Claims 1-7, 9-12, 16-18, 21-25, and 26-28 are pending. Claims 2-7, 10-12, 17, 18, 21-23, 25 have been amended to place the claims in proper U.S. format. Claims 26-28 have been added. Support for the new claims may be found throughout the specification and claims as discussed below. Since support for the amendments and new claims can be found throughout the specification and claims as originally filed, there is no new matter added as a consequence of the amendments and new claims.

**The Rejections under 35 U.S.C. § 103(a) Should Be Withdrawn**

Claims 1-4, 7, 9-12, 16-18 and 21-25 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 994,816 to Cahill in view of U.S. Patent No. 5,276,996 to Lee. The Examiner alleges that Cahill teaches a method of manufacturing a plant support manufactured having at least partially open wall, the box-shaped element being at least covered with a preferably substantially biodegradable covering material, the covering material being provided in such a manner that it covers the partially open wall at least partially, such that the wall becomes soil-proof, while the roots of a plant growing in the pot during use can grow at least partially through the covering material and to the outside of the plant support, as the covering material is manufactured from a biodegradable material. The Examiner acknowledges that Cahill is silent on the disclosure of a substantially vertical extending guide element mounted on the box-shaped element. However, the Examiner alleges that Lee teaches a substantially vertical extending guide element mounted in combination on a box-shaped element. Therefore, NY02:476419.1

the Examiner concludes that it would have been obvious to one of skill in the art to modify the teaching of Cahill at the time of the invention for the watering and fertilizing features taught by Lee. With regard to claims 2, 3, 4, 7, 11, 21, 22, 23, 24 and 25, the Examiner alleges that Cahill teaches the recited claim limitations of each claim.

Applicants respectfully traverse the rejection. The present invention relates to a plant support usable for growing plants that require vertical support, without the need to subject the plants to the trauma of transplantation. Plants grown in the plant support of the present invention can be grown from scratch and be placed directly in or on soil, without transplantation because roots can grow through the covering material on the outside of the box-shaped element. Furthermore, plants grown in the plant support of the present invention may be used for long term growth and cultivation of the plant. The plant support of the present invention comprises a box-shaped element having an at least partially open wall and an upper surface and a guide element which extends substantially vertically above the upper surface of the box-shaped element and is connected to the box-shaped element, for guiding plants to be grown in the box-shaped element.

In contrast to the present invention, Cahill relates to a basket for transplanting trees and shrubs. The body of the basket is formed with salal or another growing vine secured around a skeleton frame, with sheets of moss secured to the outside of the frame for moisture retention. Cahill teaches a vessel specifically for transplantation purposes. Such a vessel would be unsuitable for long term growth of a tree or shrub, which require a vertical support during growth as taught by the present invention. Furthermore, Cahill fails to teach this vertical guide element of the presently claimed plant support.

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Applicants assert that the cited art does not provide any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify Cahill or to combine the teachings of Cahill and Lee. Cahill teaches a basket for transplantation of grown plants, whereas Lee teaches a tubular support member for growth of plants that is used prior to planting or while the plants are relatively young. Furthermore, the grown plants disclosed in Cahill are trees or shrubs, whereas the plants disclosed in Lee are creeping vines. In fact, the vertical support disclosed by Lee is specifically shaped for creeping vines. The plants chosen for transplantation in Cahill are sufficiently stable by themselves and do not require any support during the temporary transplantation process. Since the plants disclosed in the two references are very different types of plants and the vessels disclosed in each reference are designed for very different purposes, one of skill in the art would not have been motivated to combine the disclosures of Cahill and Lee.

Applicants respectfully disagree with the Examiner contention that one of skill in the art would be motivated to add the watering and fertilizing features of the vertical guide taught in Lee to the basket disclosed by Cahill. There is no disclosure provided in Cahill to apprise one of skill in the art of the need for additional watering and fertilizing features. In fact, Cahill teaches that the moss walls are efficient at retaining moisture within the basket (col. 2, lines 78-80). Without such a teaching or suggestion of a need to modify Cahill, one of skill in the art would not be motivated to modify basket of Cahill to arrive at the claimed invention.

With regard to claim 3, Cahill fails to disclose that the basket is substantially manufactured from wire material. The basket skeleton is formed of pieces of salal vine (page 1, lines 41-44), branches (page 1, lines 50-52) and burlap (page 1, lines 57-60). Wire is only used

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to secure the sticks and hoops, where they meet in the frame of the basket (page 1, line 55). In addition, Cahill clearly suggests that a wire frame is undesired (page 2, lines 6-8) and, therefore, teaches away from the limitation recited in claim 3.

With regard to claim 4, Cahill does not disclose the use of latex and other chemical binding agents, as presently disclosed. Instead, the Examiner points to the use of wire as the binder, which cannot be referred to as a binding agent as disclosed by the present invention. There is no disclosure of binding agents in accordance with the present invention.

With regard to claim 7, Cahill does not disclose the covering material woven into the wall of the basket. Cahill refers to only the use of moss as a covering material. Therefore, the Examiner's citation to the use of burlap to wind around the natural branches and sticks does not constitute covering material in accordance with the present invention.

With regard to claim 21, the Examiner appears to suggest that the manufacture of one piece would be obvious to one of skill in the art since the modification is merely the selection of a known manufacturing method to meet design cost parameter. The Examiner is relying on impermissible hindsight. Since Cahill discloses a biodegradable basket and Lee discloses a metal support structure, they cannot be easily combined to form one structure. A metal basket would not deteriorate as taught by Cahill and a support structure made of vines would deteriorate too quickly and be unsuitable for support. Therefore, Applicants assert that it would not have been obvious to one of skill in the art to combine Cahill with Lee to arrive at the plant support of claim 21.

With regard to claim 24, the Examiner alleges that it would have been obvious to one of ordinary skill in the art since the modification is a duplication of a known element for a multiple

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effect to perform the same intended function for application to industrial practices. Cahill does not disclose of a plurality of plants. There would be no motivation for arranging them baskets together, since each one is designed to hold a grown shrub or a tree. In addition, the plant support of the present invention may be arranged to permit the formation of an elongated hedge, which is neither taught nor suggested by either Cahill or Lee.

The Examiner has rejected claim 5 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 994,816 to Cahill as applied to claim 1 and further in view of U.S. Patent No. 3,958,265 to Proctor. The Examiner acknowledges that Cahill is silent on the claimed limitation, but alleges that Proctor discloses a basket liner for moisture retention made of coco fibers and latex binder. Therefore, the Examiner alleges that it would have been obvious to one of skill in the art to modify the teachings for the reasons taught by Proctor of moss substitution.

Proctor teaches an inorganic and organic fibrous mat materially that may comprise coconut fiber and latex, which can be used as a liner for pots. It is used to protect the plant roots in the pots and to conserve moisture. However, there is no disclosure provided in Cahill to apprise one of skill in the art of the need for such a liner. As pointed out above, Cahill teaches that the moss walls are efficient at retaining moisture within the basket (col. 2, lines 78-80). Without such a teaching or suggestion of a need to modify Cahill, one of skill in the art would not be motivated to use the liner from Proctor in the basket of Cahill to arrive at the claimed invention.

The Examiner has also rejected claim 6 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 994,816 to Cahill as applied to claim 1 and further in view of

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U.S. Patent No. 3,818,633 to Sable. The Examiner alleges that Sable teaches a sheet covering for a moss covered box-shaped element. The Examiner alleges that it would have been obvious to one of skill in the art to modify the teachings at the time of the invention for means of controlling watering in a hanging configuration as taught by Sable.

Sable teaches a watering device for hanging baskets, which is a circular water-resistant sheet that surrounds the hanging fibrous basket and holds water and plant food for the plant. In contrast, the covering material of claim 6 is made of biodegradable material and has nothing to do with being an efficient watering device for a hanging basket.

For the foregoing reasons, Applicants submit that claims 1-7, 9-12, 16-18 and 21-25 are patentable over Cahill in view Lee, Proctor and Sable. Applicants respectfully request withdrawal of the rejection of the claims under 35 U.S.C. § 103(a).

#### New Claims

Claims 26-28 have been added. Support for the claims can be found throughout the specification and claims as filed and at page 9, lines 20-21, Figures 2 and 3. Applicants submit that the new claims are also patentable over the cited art discussed herein.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully request withdrawal of the outstanding rejections and allowance of the pending claims.

Applicants request a two month extension of time and enclose herewith the requisite fee as set forth in 37 C.F.R. § 1.17(a)(2). Applicants do not believe that any additional fee is required in connection with the submission of this document. However, should any fee be required, or if any overpayment has been made, the Commissioner is hereby authorized to charge any fees, or credit or any overpayments made, to Deposit Account 02-4377. A duplicate copy of this sheet is enclosed.

Respectfully submitted,  
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